

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: January 29, 2009

Opposition No. 91179324  
Cancellation No. 92047581

ACTIBIOL S.A.

v.

MOR-NUTECH, INC.

**Cheryl Butler, Attorney, Trademark Trial and Appeal Board:**

In an order dated October 14, 2008 in Opposition No. 91179324, the Board made determinations with respect to opposer's then-pending motion to compel (filed May 21, 2008). The Board further observed that the parties were also involved in Cancellation No. 92047581 and suspended proceedings in the opposition pending disposition of the cross motions for summary judgment pending at that time in the cancellation proceeding. The Board, in its October 14, 2008 order, informed the parties that, in the event the cross motions for summary judgment were denied in the cancellation proceeding, both proceedings may be consolidated and appropriate dates would be reset, including time for applicant to supplement its discovery responses. On December 18, 2008, the Board denied the cross motions for summary judgment in Cancellation No. 92047581 and reset dates for that proceeding

only. On December 22, 2008, the Board issued an order modifying the reset schedule for the cancellation proceeding only.

**Proceedings are consolidated**

The Board has reviewed the opposition and the cancellation proceeding. Both proceedings involve the same parties and at least some of the same questions of law and fact. An answer has been filed in each case.

When cases involving common questions of law or fact are pending before the Board, consolidation of such cases may be appropriate. Proceedings may be consolidated upon the Board's own initiative. See Fed. R. Civ. P. 42(a); and TBMP §511 (2d ed. rev 2004). The Board finds it appropriate to consolidate the above-identified proceedings for purposes of judicial economy.

Accordingly, Opposition No. 91179324 and Cancellation No. 92047581 are hereby consolidated and may be presented on the same records and briefs. The record will be maintained in Opposition No. 91179324 as the "parent" case, but all papers filed in these cases should include both proceeding numbers in ascending order.

**Defendant allowed time to supplement discovery responses**

Applicant was informed in the October 14, 2008 order in Opposition No. 91179324 that, upon resumption of proceedings, it would be allowed time to supplement its discovery responses as ordered. The Board notes that applicant, on November 19, 2008, filed correspondence which appears to address at least some of

the discovery requests for which applicant was ordered to supplement its responses.

Accordingly, in the event, and to the extent applicant has not already done so, applicant is allowed until THIRTY DAYS from the mailing date of this order in which to supplement its responses to opposer's discovery requests as ordered in the October 14, 2008 order in Opposition No. 91179324.

The schedule

Discovery and trial dates are reset to coincide with the schedule set by the Board's December 22, 2008 order in Cancellation No. 92047581. Such dates are copied below:

Discovery Period to Close:	May 17, 2009
30-day testimony period for party in position of plaintiff to close:	August 15, 2009
30-day testimony period for party in position of defendant to close:	October 14, 2009
15-day rebuttal testimony period to close:	November 28, 2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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